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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – TW – A325
Washington, DC 20554

Electronic Ex Parte Filing

Re: *Ex Parte* Presentation (via Electronic Filing)
CC Docket No. 96-128

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, I submit this Comment for inclusion in the record of this proceeding.

It seems self-evident that the remedy sought by the *Wright* Petitioners is too narrow to resolve all of the abuses associated with prison pay phone services. Benchmark rates for long-distance calls at three privately operated prisons, even when coupled with prepaid and debit options and the elimination of commissions, do nothing to address these and other unconscionable practices at other correctional facilities across the nation, nor will they end the exploitation of prisoners and their families. These limited remedies will, however, perpetuate protracted litigation that will result in multi-jurisdictional proceedings and judgments that are almost certain to be inconsistent and contradictory at the expense of consumers who can ill-afford to continue to bear the back-breaking cost of calls initiated by incarcerated loved ones.

Claims that prisoner phone service providers would be financially viable at all locations under Petitioners' proposal are, at best, dubious. For example, jails and other local confinement facilities incarcerate about half of the nation's 2.3 million prisoner population. But jails generally permit brief access to telephones, many restricting calls to 15 minutes or less.¹ And of

¹ **North Carolina Public Utilities Commission Rule R13-6. Special rules for service within confinement facilities.** . . . Notwithstanding any other rules in this Chapter, PSP [Payphone Service Provider] instruments located in the detention areas of confinement facilities:

(b) May, if specifically requested by the administration of the confinement facility and if the access line provider and presubscribed interexchange carrier are notified by the PSP, be arranged or programmed to *terminate calls after 10 minutes* of conversation time; . . . (Emphasis added.)

even greater significance, the overwhelming majority of calls originating in a jail are local or intra-state long-distance,² subject to state-imposed rate caps. As a result, it will not likely be possible for some service providers to recoup costs in all locations or in all states because only long-distance rates will have been benchmarked and local regulation of intrastate calls is inconsistent and, in some cases, inexplicable.³

Thus, there is indeed a growing consensus that *comprehensive remedial action* is required, rather than half measures. The American Bar Association, the National Association of State Utilities Consumer Advocates, and the Public Defender for the Eleventh Judicial District of Florida have all explicitly endorsed the 29 October 2008 proposal for a comprehensive resolution of these issues. That proposal has also been supported by the D.C. Office of the People's Counsel, the Brennan Center for Justice, and about a dozen private citizens and consumers.

For these reasons (and those set forth in the proposal of 29 October 2008), the FCC should: (1) establish a comprehensive, fair rate (derived from the lower rates outlined in the report, "Inmate Calling Services - Interstate Call Cost Study") for (2) all intra-state and inter-state (3) prisoner collect, pre-paid, and debit telephone calls that (4) covers legitimate costs, (5) provides a reasonable rate of return to prison phone providers, (6) eliminates "commissions," (7) forecloses alternative means to unjustifiably inflate the cost of prisoner phone calls, and (8) defers to state public utilities commissions to address requested cost adjustments. In this way, prison phone providers will receive fair and reasonable rates on the widest possible range of prisoner-initiated telephone calls, while consumers would be treated fairly, rather than being grossly exploited as they are under the existing hodge-podge of varied, inconsistent state regulations.

² **Id., Rule 13-6(d):** [Notwithstanding any other rules in this Chapter, PSP instruments located in the detention areas of confinement facilities:] . . . Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls; . . .

³ In a proceeding seeking waiver of a rule which capped intrastate rates to those charged by another in-state private telephone service provider, the Utilities Commission declined to grant a waiver but instead revised the rule to permit increased rates beyond those requested – again, based upon rates charged by another private in-state telephone service provider. *In the Matter of PayTel, et al.*, Order Revising Rule 13-9(d), Docket No. P-100, Sub 84c, NC Utilities Commission (1 May 2008).



Thank you for your kind attention to this matter. Please let me know if you have any questions or if I can otherwise be of service. In the meantime, with all best wishes, I am,

Sincerely yours,



Michael S. Hamden

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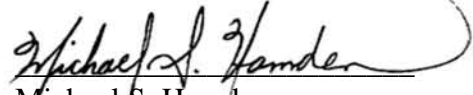
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DECLARATION OF MICHAEL S. HAMDEN

I declare under penalty of perjury that the information contained in the following ***Ex Parte Presentation*** is true, accurate, and complete to the best of my knowledge and belief, formed after reasonable inquiry.

This 8th day of February 2008.



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